

DATE ISSUED: July 6, 2011

ATTENTION: Honorable Chair and Members of the Redevelopment Agency  
Docket of July 12, 2011

ORIGINATING DEPT.: Centre City Development Corporation

SUBJECT: America Plaza II (block bounded by Kettner Boulevard, B and India  
streets and the trolley station at One America Plaza) – Exclusive  
Negotiation Agreement with Comercial Hotelera Mexicana de  
Occidente SA de CV for an Agency-Owned Air Rights Parcel  
(Parcel 5) – Columbia Sub Area of the Centre City Redevelopment  
Project

COUNCIL DISTRICT: 2

REFERENCE: None

STAFF CONTACT: Eli Sanchez, Senior Project Manager, 619-533-7121

**REQUESTED ACTION:** That the Redevelopment Agency of the City of San Diego (“Agency”) considers for approval the proposed Exclusive Negotiation Agreement (ENA) for the development of the Agency-owned Parcel 5 of the One America Plaza project site (“Parcel 5 Site”) located in the Columbia Sub Area of the Centre City Redevelopment Project.

**STAFF RECOMMENDATION:** That the Agency approves the ENA between the Agency and Comercial Hotelera Mexicana de Occidente SA de CV (“Developer”) for the development of the Parcel 5 Site.

**SUMMARY:** The Parcel 5 Site was purchased by the Agency in 1996 as the site for the main library. The site is the cover plate for the existing subterranean parking facility that serves One America Plaza. The Parcel 5 Site is a complex site to develop based on the existing parking structure and changed circumstances with respect to more stringent seismic regulations, building code requirements and coordination with the adjacent One America Plaza owner. The Agency has previously considered several unsuccessful development proposals on the site.

The purpose of the ENA is so that the Developer can perform the necessary structural analysis to determine the scope of development and associated development costs in order to present the Agency with an appropriate development proposal, which will establish the purchase price to be paid by the Developer for the Parcel 5 Site, the Scope of Development, the Schedule of Performance and other specifics to be included in a Disposition and Development Agreement (DDA). The proposed term of the ENA is for a 275-day period.

FISCAL CONSIDERATIONS: None at this time, other than staff time and legal costs for the ENA preparation.

ECONOMIC IMPACTS: None determined at this time

CENTRE CITY DEVELOPMENT CORPORATION RECOMMENDATION: On May 25, 2011, the Centre City Development Corporation Board voted to recommend that the Agency enter into an ENA with the Developer.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: On May 18, 2011, the Centre City Advisory Committee (CCAC) and the Project Area Committee (PAC) voted to support the staff recommendation.

DEVELOPMENT TEAM

ROLE	FIRM/CONTACT	OWNERSHIP
Developer	Comercial Hotelera Mexicana de Occidente SA de CV  Ing Gabriel Ruiz Huerta President of ICD	Privately Owned
Project Manager	Asintur Angelica Fernandez	Privately Owned

BACKGROUND:

The Parcel 5 Site is located in the Columbia neighborhood, east of the Santa Fe Depot and Museum of Contemporary Art of San Diego (MCASD) and north of the One America Plaza tower. The Parcel 5 Site is located in the high-intensity office and employment Core (C) Land Use District and within the Employment Required (ER) Overlay District. The ER Overlay District ensures adequate opportunities for employment-based commercial uses. Residential uses in this overlay district shall not exceed 50 percent of the gross floor area, counted against the base Floor Area Ratio (FAR). The base minimum FAR for the subject site is 5.0 with a base maximum of 8.0. Development may exceed the base maximum by providing specified public benefits and/or development amenities resulting in a maximum FAR of 14, with all incentives/bonuses included.

The Agency entered into a Disposition and Development Agreement for the development of the America Plaza project on the two block area bounded by Broadway, Kettner Boulevard, India and B streets in March 1989 ("America Plaza DDA"). The America Plaza DDA provided for the development of an office tower, a hotel tower, a transit station for the trolley, approximately

400,000 square feet of below-grade parking and 40,000 square feet of retail/cultural uses. The construction of the below-grade parking, office tower (One America Plaza), retail/cultural building (Museum of Contemporary Art) and trolley station was certified to be complete by the Agency in July 1992.

The Agency purchased the Parcel 5 Site (previous hotel tower parcel) in 1996 from Bright Properties West, Inc. ("Bright Properties") for redevelopment purposes as the site for the New Main Library. Bright Properties was the then owner of the One America Plaza site. The purchase price was \$2.2 million. The Parcel 5 Site is an air-rights parcel, which includes an easement in the garage beneath the parcel for the use of 113 parking spaces by the Agency. In December 2001, the Agency entered into an ENA with Bright Properties and then jointly with Lennar Properties for the development of the Parcel 5 Site, until negotiations were terminated in June 2002.

Shortly after termination of negotiations for purchase and development of the Parcel 5 Site, Bright Properties announced its interest in selling One America Plaza. In November 2002, the sale was completed to One America Plaza PT, LLC, of which General Electric Pension Trust ("GE Pension Trust") was the sole member. GE Pension Trust expressed interest in the purchase and development of the Parcel 5 Site in that the site had a negative impact on the appearance and activity/synergy of the overall One America Plaza development. The Agency entered into an ENA with One America Second Phase PT, LLC, whose sole member was GE Pension Trust, in July 2003. Extensions to the ENA with GE Pension Trust were granted in March 2005 and November 2005. The ENA with GE Pension Trust expired on February 15, 2006.

The Irvine Company has acquired the fee interests previously held by GE Pension Trust in the two-block One America Plaza development. Such fee interests include all parcels within the development—including the subterranean parking garage—with the exception of the Parcel 5 Site.

The 2006 Downtown Community Plan shows a portion of the subject site as a public open space potentially designed as a public plaza or place in conjunction with a development project. In March 2008, the Corporation engaged Civitas, landscape architects, to conduct an engineering feasibility analysis to determine the Parcel 5 Site's viability for constructing a park or plaza on the entire surface of the existing parking structure. In January 2009, the design consultant team completed its engineering feasibility analysis and concluded the site to be appropriate for a park/plaza use.

In April 2009, the Corporation's Real Estate Committee discussed the development of the Parcel 5 Site. The discussion followed an informational update on various concept proposals and potential design concepts for utilization of the Parcel 5 Site. In addition to a park to be developed by the Corporation, proposed concepts included: a western terminal location for a Bus Rapid Transit (BRT) terminal presented by SANDAG, a community center presented by the

Rotary Club of San Diego that would be primarily utilized by the Rotary Club, and an above-grade parking structure that included a community center and a public plaza proposed by the Irvine Company.

The Real Estate Committee consensus did not support any of the proposals presented at the April 2009 meeting. Since the Real Estate Committee meeting, the park concept has been removed as a future project from the Agency budget for Centre City. SANDAG is no longer considering the site for a BRT terminal, although SANDAG continues to develop plans for a bus layover area just north of the Parcel 5 Site, as well as BRT transit platforms across the street from the Parcel 5 Site along Kettner and India streets.

The Corporation did not receive any further proposals or inquiries with respect to development of the Parcel 5 Site until February 2010, when the Developer indicated an interest in developing the Parcel 5 Site as a hotel. Due to complexities associated with the development of the site, the Developer requested an opportunity to enter into an ENA in order to perform a complete due diligence on the site, to engage in negotiations for the acquisition of the air-rights to develop the site, and to obtain approval of the project.

Sole Source Determination: There are several compelling reasons why a sole source selection of the Developer for an ENA providing for a 275-day negotiating period can realize the earliest and highest quality development of the Parcel 5 Site and relieve the Agency of current ongoing expenses.

- 1) Since 1996 the Agency has considered several unsuccessful development proposals on the Parcel 5 Site. In addition to a hotel and the uses listed above, proposals have also included mixed-use residential with ground-floor retail. Many of the past proposals were made by development entities associated with the adjacent One America Plaza owner. Over the past two years, the Developer has been the only entity that has proposed any development that would fully utilize the development potential of the site. This includes a from the Irvine Company, a major southern California commercial developer and current owner of the adjacent One America Plaza building and below-grade parking structure, confirming its lack of interest in developing the Parcel 5 Site.
- 2) The Parcel 5 Site is one of five parcels included within an owners association, which is subject to payment of annual dues and a pro-rata share of costs for improvements. Future owners association costs are estimated to be \$150,000 per year. The Agency has expended approximately \$620,000 since 2006.
- 3) The development of the Parcel 5 Site is an air-rights parcel and is integral to the existing two-block One America Plaza development owned by the Irvine Company. The Irvine Company maintains certain design approval rights over the Parcel 5 Site and below-grade parking

garage. This air-rights parcel will be complex in its planning, design and construction due to the following:

- a) The existing podium of the Parcel 5 Site was originally designed to support a 13-story hotel with an L-shaped slab configuration over a two-story above-grade base. At the time of the original design and construction of the parking structure, San Diego was classified as a Seismic Zone 3. San Diego is now classified as Seismic Zone 4.
  - b) Additionally, changes in the Uniform Building Code have significantly increased the basic requirements for all aspects of the seismic design. As a result of these changes, even construction of the original hotel design would require substantial seismic upgrades to the parking structure. These upgrades may not only have a significant cost impact but are also likely to reduce the amount of parking in the existing parking structure.
  - c) The costs of these structural upgrades will need to be carefully evaluated in establishing the purchase price of the Parcel 5 air-rights and 113 parking spaces.
  - d) The Agency's air-rights agreement with the Irvine Company includes Agency ownership of 113 single parking spaces in the existing parking structure. The remaining parking spaces below the Parcel 5 Site are owned by the Irvine Company. Any proposed changes to the number and location of parking spaces, as well as any necessary modifications to the circulation in the parking structure, will need to be negotiated with the Irvine Company. In addition, Parcel 5 Site construction will require close coordination with and construction easements from the One America Plaza owner.
- 4) Any development on the Parcel 5 Site will require analysis of alternative structural and parking solutions in order to determine the most cost-effective structural system and building design. Such a structural feasibility study and the development of a feasible architectural program are estimated to cost approximately \$750,000.
  - 5) The Developer is prepared to immediately invest the significant costs associated with conducting the necessary engineering analysis and preparation of necessary architectural program(s) and to deliver the completed report to the Agency. If the Developer does not proceed with the development and construction of the site in a timely manner, the Agency will derive the benefit of the engineering analysis and the consultant's report for use by the Agency in determining any future alternative development of the Parcel 5 Site.
  - 6) Moreover, the Developer has demonstrated extensive experience in the development of hotels and a financial capacity to attract financing for the development of a full service hotel on the Parcel 5 Site. In addition, the Developer has provided letters of interest from financing institutions indicating a track record of participating with the Developer in the past

and a current interest in participating in the development of the Parcel 5 Site with the Developer.

- 7) The process for the Agency to issue a Request for Proposals/Qualifications (RFP/Q) for the selection of an alternative developer would require a minimum period of approximately 8-10 months. In the current economic environment and without an engineering feasibility analysis and architectural program(s) for the development of the site, it is unlikely that many developers would expend funds to prepare a response to an RFP/Q.

#### DISCUSSION:

The entire Parcel 5 Site is the cover plate of an existing underground parking facility that serves One America Plaza. The project area is approximately 1.5 acres in size (Attachment A). At a minimum, the Developer's design concept provides for development and construction of a 13-story hotel, including approximately 300 guest rooms in an approximately 234,000 square-foot L-shaped structure on the Parcel 5 Site.

The Columbia neighborhood has evolved into a diverse neighborhood comprised of office buildings, hotels, retail uses, residential development and museums. Existing nearby uses include the 34-story One America Plaza, a premiere Class A office tower; the One America Plaza trolley station; Santa Fe Depot, a multi-modal transit station; the downtown location of the Museum of Contemporary Art; the Westin and W hotels are within blocks; as well as a variety of condominium towers and street-level dining/retail. A hotel use on the Parcel 5 Site would complement these uses.

The Developer requests an ENA with the Agency providing for a 275-day negotiating period. The Developer indicates that they are prepared to invest the significant costs associated with conducting the necessary engineering analysis provided that they obtain the security of such an ENA. The purpose of the ENA is so that the Developer can perform the necessary structural analysis to determine the scope of development and associated development costs in order to present the Agency with an appropriate development proposal, which will establish the purchase price to be paid by the Developer for the Parcel 5 Site, the Scope of Development, the Schedule of Performance and other specifics.

At the Corporation's Real Estate and Budget/Finance & Administration Joint Committee ("Committee") meeting of May 11, 2011, Graham Forbes representing UNITE HERE Local 30 ("UNITE HERE"), made various recommendations to the Committee with respect to the ENA and the development of the Parcel 5 Site. UNITE HERE is a labor organization that represents local employees who work in the hotel, gaming, food service, manufacturing, textile, distribution, laundry, and airport industries. The Committee requested that staff review the UNITE HERE recommendations and to provide a staff response to same. Below is the staff response to UNITE HERE.

1. That Corporation staff work with UNITE HERE to receive its suggestions for integration into the ENA and consider proposed alternative development for the Parcel 5 Site.

Response: Corporation staff contacted Mr. Forbes and requested that UNITE HERE submit a written summary of its requested items to be considered in the negotiations with the developer. As of May 16, 2011, Corporation staff had not received a written response from UNITE HERE.

2. Hotel operator identification: After 90 days, Developer to submit a binding letter of commitment from the proposed hotel operator committing to operate the hotel and identifying the proposed flag for the operation of the hotel.

Response: The general purpose of the ENA is so that the Developer can perform the necessary structural analysis to determine the scope of development and associated development costs in order to present the Agency with an appropriate development proposal, which will establish the purchase price to be paid by the Developer for the Parcel 5 Site, the Scope of Development, the Schedule of Performance and other specifics. In consultation with the Developer, Corporation staff recommends that timing of the identification of the hotel operator be incorporated into the Schedule of Performance in accordance with the terms and conditions of any subsequent DDA.

3. That the ENA provide that documents submitted by the Developer be subject to the Public Records Act (PRA). In addition, UNITE HERE suggests that the following documents be submitted to the Agency subject to the PRA:
  - a. Developer to provide written progress reports every 30 days
  - b. Financing plan documents subject to PRA
  - c. Prepare and submit marketing feasibility study
  - d. Submit Developer background information such as:
    - i. Track record meeting public obligations
    - ii. Compliance with local, state, and federal regulations re:
      1. Discrimination
      2. Disability
      3. Employment and occupational
      4. Environmental laws and regulations
      5. Health and safety

Response:

- a. PRA: The California State Legislature adopted the PRA in 1975 to give the public access to information in possession of public agencies. The public can inspect any record unless the record is exempt from disclosure under the PRA. The PRA excludes certain categories of records from disclosure; including materials related to internal agency rules, proprietary business information, inter- and intra-agency communications that are protected by legal privileges, and personal privacy. The

Agency is subject to the PRA and documents received by the Agency are subject to request under the PRA.

- b. Progress Reports: Staff notes that the ENA currently provides that the Developer submit to the Agency the following described work items within the times respectively set forth below. Staff recommends that no further periodic reporting is necessary.
  - i. Within 90 days after execution of this Agreement by the Agency: The Developer will contract with an appropriate structural engineering consultant and cause to be prepared an appropriate engineering feasibility analysis to determine alternative structural solutions to retrofit the existing parking garage structure to accommodate the development/construction of a high-quality full-service hotel appropriate for the Site. Deliver the completed report by the structural engineering consultant to the Agency for use by the Agency in determining the future development of the Site.
  - ii. Within 150 days after execution of this Agreement by the Agency: Complete architectural program with an architect with significant experience in urban high-rise hotel design, including site plan, floorplate and elevation studies, building sections, and preliminary structural and HVAC analysis. Submit notice to the Agency that the Developer has determined that the Site is suitable for the development of a high-quality, full-service hotel and that the Developer has elected to negotiate a DDA for the purpose of developing the Site as such a hotel.
  - iii. Within 180 days after the execution of this Agreement by the Agency: Submit schematic package including refinement of the above tasks together with parking, presentation drawings and cost analysis and project proforma, and a complete Centre City Development Permit application.
  - iv. Within 210 days after execution of this Agreement by the Agency: Receive preliminary design review approval by the Corporation.
  - v. Within 275 days after execution of this Agreement by the Agency: Complete the negotiations, and execute a DDA, for the development and construction of the site with a full-service, high-quality hotel.
- c. Financial Plan: The ENA currently provides that the Developer shall be required to make and maintain full disclosure to the Agency of the methods of financing and the financing documents to be used in the proposed development. The timing of when the financing documents shall be submitted to the Agency shall be the subject of the DDA, more particularly within the Schedule of Performance, and the Method of Financing.
- d. Market Feasibility Study: The Developer exhibits a broad experience in the hotel development industry. The Developer has also provided information from potential financial institutions prepared to participate with the Developer in the development



and construction of the project on the Parcel 5 Site. Staff does not recommend that the Developer prepare and submit a market feasibility study.

- e. Developer background information: The Developer is a Mexican limited liability stock company and as such has primarily been subject to the laws of the country of Mexico, not the United States. Therefore, the Developer's historic compliance with United States laws pertaining to discrimination, disability, employment and occupational, environmental laws and regulations, and health and safety would not be contained in any information submitted.

- 4. Require that the City of San Diego ("City") Living Wage Ordinance apply to the project.

Response: The City's Living Wage Ordinance does not currently pertain to the manner of development that is the subject of the ENA or subsequent DDA and recommends that the ordinance not be applied to this project. Staff recommends that rather than singling out a single project to which a Living Wage requirement should be imposed, that this policy issue be more appropriately addressed by the City Council or Agency Board for consideration on a City-wide basis. Imposing such a restriction on a single project or small geographic area creates economic disadvantages for the viability of that project when competing against those projects or areas that such a restriction is not imposed.

- 5. Alternative development on the Parcel 5 Site:
  - a. An urban park space; or
  - b. A bus rapid transit (BRT) station.

Response: The Corporation Board has previously considered the development of the Parcel 5 Site as a park and the site has been removed from the Agency budget as a project. In addition, SANDAG and MTS have selected a nearby site within the Columbia District and commenced preliminary design activities for a BRT station on the selected site. A hotel is an appropriate and preferred use for this site, if deemed feasible, as it activates the area on a 24/7 basis and generates property, sales and hotel tax revenue for the Agency and the City.

Essential Terms and Conditions: Below is a summary of the essential terms and conditions of the proposed ENA with the Developer. The proposed ENA is attached as Attachment B.

- 1) The period of negotiations would be 275 days with these interim submittals required:
  - a) The Developer will contract with an appropriate structural engineering consultant and cause to be prepared an appropriate engineering feasibility analysis to determine alternative structural solutions to retrofit the existing parking garage structure to accommodate the development/construction of a high quality, full-service hotel

appropriate for the Parcel 5 Site. Deliver the completed report by the structural engineering consultant to the Agency for use by the Agency in determining the future development of the Parcel 5 Site. Delivery of the consultant report to the Agency will be within 90 days of the execution of the ENA by the Agency.

- b) Developer to complete an architectural program with an architect with significant experience in urban high-rise hotel design, including site plan, floorplate and elevation studies; building sections and preliminary structural and HVAC analysis. Submit notice to the Agency that the Developer has determined that the Parcel 5 Site is suitable for development of a high quality, full-service hotel and that the Developer has elected to negotiate a DDA for the purpose of developing the Parcel 5 Site as such a hotel within 150 days of the Agency's execution of the ENA.
  - c) Developer to submit a schematic package including refinement of the above tasks together with parking, presentation drawings and cost analysis and project proforma, and a complete Centre City Development Permit application within 180 days after the execution of the ENA by the Agency.
  - d) Developer to receive Preliminary Design Review approval by the Corporation within 210 days after execution of the ENA by the Agency.
  - e) Developer and Agency to complete the negotiations, and execute a DDA, for the development and construction of the Parcel 5 Site for a high-quality, full-service hotel within 275 days of execution of the ENA by the Agency. A 90-day extension by the Executive Director or designee can also be considered if the completion of negotiations are deemed imminent by the Executive Director.
- 2) The development to be negotiated must be consistent with applicable land use regulations. All costs of the development, including structural retrofit of the subterranean garage, shall be at the Developer's expense.
  - 3) The Developer shall submit a non-refundable good faith negotiation payment to the Agency in an amount of \$25,000 concurrent with the delivery of the executed ENA by the Developer to the Agency.
  - 4) The Purchase Price for the Parcel 5 Site will be established during DDA negotiations and will take into consideration factors such as market conditions, scope of development, cost of development, risks incurred, estimated or actual profit, estimated or actual sales prices or rental rates for the development to be constructed, public purpose, and other matters relevant to establishing the fair market value for the uses permitted to be developed, and in accordance with State law. However, in determining the compensation by the Developer to the Agency under the terms of the DDA, the Agency may consider its actual out-of-pocket

costs (excluding general overhead) attributable to the Parcel 5 Site. The Agency's "actual out-of-pocket costs" may include, without limitation, the Agency's purchase price for the Parcel 5 Site and fees and costs related to the maintenance and management of the Parcel 5 Site.

Project Description – Development of the Parcel 5 Site as a full service hotel that, at a minimum, will include a 13-story structure with 300 guest rooms in an approximately 234,000 square-foot L-shaped structure.

Project Financing – The Developer is authorized by the Secretary of State to conduct business in the State of California. The Developer will be responsible for all costs and expenses for the development and construction of the Parcel 5 Site. The Developer has financed projects of similar size and has demonstrated sufficient financial capabilities to finance the project.

Disposition of Property – The Developer proposes that during the ENA period the Agency will agree to negotiate exclusively with the Developer for the future purchase and development of the Parcel 5 Site.

Participation by Agency – The Agency agrees to negotiate exclusively with the Developer with respect to the Parcel 5 Site during the period of the ENA.

Proposed Schedule of Performance – The Developer proposes that the ENA period be for 275 days.

Environmental Impact: This activity is not a "project" for purposes of the California Environmental Quality Act (CEQA) because it does not fit within the definition of a "project" set forth in Public Resources Code Section 21065 or State CEQA Guidelines Section 15378. Thus, this activity is not subject to CEQA pursuant to State CEQA Guidelines Section 15060(c)(3).


CONCLUSION


The Parcel 5 Site is a complex site to develop based upon the existing parking structure and changed circumstances with respect to more stringent seismic regulations, building code requirements and coordination with the adjacent owner of the One America Plaza site. The proposed ENA with the Developer provides that the Agency can realize the earliest and highest quality development of the Parcel 5 Site and relieve the Agency of current ongoing expenses. Staff recommends approval of the ENA with the Developer for a 275-day period.

Respectfully submitted,

  
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Eli Sanchez  
Senior Project Manager

Concurred by:

  
\_\_\_\_\_  
Frank J. Alessi  
Executive Vice President & Chief Financial  
Officer

  
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Jeff Graham  
Vice President, Redevelopment

Attachment A – Site Map  
B – Exclusive Negotiation Agreement